

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 764 of 1999

to

FIRST APPEAL No 778 of 1999

with

CIVIL APPLICATIONS Nos 1321 of 1999 to 1335 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

and

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

RAVJI KARSHAN

Appearance:

Mr.S.J. Dave, AGP, for the appellant.

MR KL DAVE for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE C.K.BUCH

Date of decision: 04/05/2000

COMMON ORAL JUDGMENT : (Per: Kadri, J.)

1. Appellants have filed this group of first appeals under Section 54 of the Land Acquisition Act, 1894 (to be referred to as 'Act' for short) read with Section 96 of the Code of Civil Procedure, 1908, challenging common judgment and award dated October 29, 1998, rendered by the learned Extra Assistant Judge, Junagadh, in Land Reference Cases Nos. 270/88 to 283/88 and 202/88. As common question of facts and law arise for our consideration, we propose to dispose of all these appeals by this common order.

2. Executive Engineer, Una Irrigation Department, sent proposal to the Collector for acquisition of land of village Kodiya for the public purpose of 'Machhunderi Irrigation Scheme'. The said proposal was scrutinized by the Government and notification to acquire lands of the respondents came to be issued under Section 4(1) of the Act which was published in the Government Gazette on February 2, 1979. After following usual procedure, declaration under Section 6 of the Act was made which was published in the Government Gazette on January 2, 1980. The Land Acquisition Officer made his award on June 23, 1980 and offered compensation of the acquired lands to the claimants at the rate of Rs.90 per Are for bagayat land and Rs.65 per Are for jirayat land.

3. The claimants were of the opinion that the compensation offered by the Land Acquisition Officer was inadequate. Therefore, they submitted applications in writing under Section 18 of the Act requiring the Land Acquisition Officer to refer the applications to the Court for determination of adequate compensation. Accordingly, references were made to the District Court, Junagadh, which were numbered as Land Reference Cases Nos. 270/88 to 283/88 and 202/88.

3. Before the Reference Court, to substantiate their claim, the respondents examined (i) Nanji Bhuta at Exh.13; (ii) Benaben Zinabhai at Exh.14; (iii) Kishorkumar Babulal at Exh.10, (iv) Jinabhai Ranchodbhai at Exh.16, (v) Ravjibhai Nanjibhai at Exh.19, and (vi)

Anubhai Bhagwanbhai at Exh.21. The appellants examined Dilsukhrai Harirai at Exh.57. On overall appreciation of oral as well as documentary evidence, and the arguments advanced by the learned counsel for the parties, the Reference Court deduced that sale deed Exh.20 produced of village Itwayia, which was adjoining village, reflected that market price of agricultural lands of village Itwayia was at the rate of Rs.500/- per Are in the year 1974. The Reference Court further deduced that, if determination of market value of acquired lands is arrived at by resorting to yield method, then it will be Rs.660/per Are for irrigated land and Rs.495 per Are for the non-irrigated land. The Reference Court further deduced that the previous award Exh.69, which was rendered in Land Acquisition Case No.205 of 1991, in respect of acquired lands of same village Kodiya, was also relevant and comparable for determination of market value of present acquired lands. The lands, which were subject matter of Land Reference Case No.205 of 1991, came to be acquired by notification issued under Section 4(1) of the Act published on February 6, 1978, wherein, the Reference Court had determined market value of acquired lands as on February 6, 1978, at the rate of Rs.660/- per Are for irrigated land and Rs.495 per Are for the non-irrigated land. The Reference Court therefore determined market value of acquired lands of village Kodiya at the rate of Rs.660/- per Are for irrigated land and Rs.495 per Are for the non-irrigated land, which has given rise to filing of these appeals.

4. Learned Assistant Government Pleader, Mr. S.J. Dave, appearing for the appellants, has taken us through the entire record and proceedings and submitted that determination of market value of acquired lands was excessive looking to the fertility and situation of the acquired lands. Learned Assistant Government Pleader further submitted that the Reference Court has erred in awarding interest on the amount of solatium which is contrary to the decision of the Apex Court in the case of State of Maharashtra vs. Maharau Srawan Hatkar, reported in Judgment Today 1995 (2) S.C. 583.

5. Learned counsel, Mr.K.L. Dave, appearing for the respondents, has submitted that a just compensation has been awarded to the respondents for their acquired lands situated in village Kodiya. It is further submitted by learned counsel for the respondents that the Reference Court had concluded that sale deed Exh.20 reflected that the price of agricultural lands of village Itwayia which was adjoining village was at Rs.500/- per Are in the year

1974. It is further submitted by learned counsel for the respondents that the notification under Section 4(1) of the Act in the present case was published in the year 1979 and, therefore, there was gap of five years between sale deed Exh.20 and notification to acquire the present lands. It is further submitted by learned counsel for the respondents that even agricultural income derived from the agricultural lands was Rs.66,000/- per Are equivalent to Rs.660/- per Are for bagayat land. It is further submitted by learned counsel for the respondents that previous award Exh.69 rendered in Land Reference Case No.205 of 1991 also indicated that, for the lands acquired in the year 1978, the Reference Court had determined market price of acquired lands of village Kodiya at the rate of Rs.660/- per Are for irrigated land and Rs.495 per Are for the non-irrigated land. Learned counsel, Mr.K.L. Dave, appearing for the respondents, has further submitted that previous award Exh.69 was challenged in this Court in First appeal No. 1320 of 1999 wherein this Court (Coram: J.M. Panchal & R.P. Dholakia, JJ.) had confirmed determination of market price of acquired lands of village Kodiya at the rate of Rs.660/- per Are for irrigated land and Rs.495 per Are for the non-irrigated land. Learned counsel for the respondents, has therefore submitted that lands, which were subject matter of previous award Exh.69, came to be acquired in the year 1978, whereas the present lands were acquired in the year 1979, yet the Reference Court had not given any rise in price and, therefore, the appeals should be dismissed.

6. The contention of learned Assistant Government Pleader for the appellants that determination of market value of present acquired lands of village Kodiya is excessive deserves to be rejected. The evidence of the claimants had established that acquired lands were having fertility and the agriculturists were raising three crops in a year and were getting net yield of Rs.66,000/- per year out of sale of agricultural produce. The Reference Court had taken into consideration principles laid down by the Supreme Court with regard to determination of market value of agricultural lands on the basis of 'yield method'. If 'yield method' is also resorted to, determination of market value of present acquired lands cannot be called excessive. Furthermore, sale deed Exh.20 in respect of lands of adjoining village Itwayia reflected that market value of the lands of the said village in the year 1974 was at the rate of Rs.500/- per Are. For the present acquired lands, notification was issued in the year 1979. Therefore, the Reference Court was justified in giving rise in price for the gap of five

years. Previous award Exh.69 rendered in Land Reference Case No.205 of 1991 also proved that in the year 1978, the Reference Court had determined market value of said acquired lands of village Kodiya at the rate of Rs.660/per Are for irrigated land and Rs.495 per Are for the non-irrigated land, which was confirmed by the High Court in First appeal No.1320 of 1992 decided on July 27, 1999. Taking from any angle, determination of market value of present acquired lands of village Kodiya at the rate of Rs.660/- per Are for irrigated land and Rs.495 per Are for the non-irrigated land cannot be called excessive. Therefore, we confirm determination of market value of present acquired lands of village Kodiya at the rate of Rs.660/- per Are for irrigated land and Rs.495 per Are for the non-irrigated land.

7. The submission of learned Assistant Government Pleader that the Reference Court had committed error in awarding interest on the amount of solatium deserves to be accepted in view of the decision of the Supreme Court in the case of State of Maharashtra vs. Maharau Srawan Hatkar, reported in Judgment Today 1995 (2) S.C. 583.

8. As a result of foregoing reasons, all the appeals filed by the appellants are partly allowed. Determination of market value of present acquired lands of village Kodiya at the rate of Rs.660/- per Are for irrigated land and Rs.495 per Are for the non-irrigated land is confirmed. However, it is held that the respondents-claimants would not be entitled to interest on the amount of solatium payable under Section 23(2) of the Act. The Office is directed to draw decree in terms of this judgment. There shall be no order as to costs.

9. Learned counsel for the appellants made grievance that the agricult

acquired way back in the year 1979 and till today they are deprived of the awarded amount of compensation and, therefore, the appellants should be directed to deposit additional amount of compensation awarded by the Reference Court. We, therefore, direct the appellants to deposit the additional amount of compensation with solatium and interest at the rate of 9% for the first year and 15% thereafter till the date of payment in the Reference Court within six months from today.

10. As the Appeals are partly allowed, Civil Applications Nos. 1321 of 1999 to 1335 of 1999 would not

survive and are disposed of.

(swamy)